

MUNOFS VI Research Report

Forum: Human Rights Council

Issue: Elevating the Universal Declaration of Human Rights to the status of binding international law.

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Introduction:



The Universal Declaration of Human Rights (UDHR), which was adopted by the UN General Assembly on 10 December 1948, was the result of the experience of the Second World War. With the end of that war, and the creation of the United Nations, the international community vowed never again to allow atrocities such as those of war, happen again. World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The document they considered, and which would later become the Universal Declaration of Human Rights, was taken up at the first session of the General Assembly in 1946.

However at it's current standing, the UDHR is neither a legally binding international law nor a treaty; member nations of the aren't legally obliged to comply to. Although it isn't a treaty it is an expression of the fundamental values which are shared by all members of the international community. And it has had a profound influence on the development of international human rights law. Some argue that because countries have consistently invoked the Declaration for more than sixty years, it has become binding as a

part of customary international law. This has led to the question of whether Universal Declaration of Human Rights should be elevated to the status of binding international law as it forms the foundation of many UN treaties including International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child, the United Nations Convention Against Torture etc.

Key terms defined:

International Law: The body of law that governs the legal relations between or among states or nations

Human Rights: Those rights that are considered universal to humanity, regardless of citizenship, residency status, ethnicity, gender, or other considerations.

UDHR: The Universal Declaration of Human Rights (Universal Declaration) is an international document that states basic rights and fundamental freedoms to which all human beings are entitled

World War: A war engaged in by all or most of the principal nations of the world

UN Charter: The UN Charter is a multilateral treaty that serves as the UN's constitution.

General Background and Overview on the topic:

As the second World War began to close, the world climate was ready for a great leap forward in the recognition and observance of human rights. When representatives of the four major powers met in 1944 at [Dumbarton Oaks](#), a stately mansion in Georgetown Washington DC, two world wars had been fought in less than 30 years, and cruelty almost beyond belief had been inflicted on members of the Jewish race in Europe and on prisoners of war in detention in Asia and Europe. An atomic bomb was about to be set off



that would show what enormous destructive power humankind could unleash in targeting nations as well as individuals, often simply because they were members of a particular race or religion.

The leaders felt there must be a better way for the nations and peoples of the world to live together and sort out their problems and laid plans for establishing what was to become the United Nations.

In late 1945, leaders of the world's nations met in San Francisco to form the United Nations. Inspired by the great South African pre-apartheid leader Field-Marshal Smuts, they included in the preamble to the Charter of the UN, an important reference to human rights. (A preamble is an important introductory section of a legal document, and explains the background to it rather than being part of its operative provisions.) The relevant part of the preamble said:

"We the peoples of the United Nations [are] determined -

.. to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".

This reference to human rights, was followed up by six references throughout the UN Charter's operative provisions to human rights and fundamental freedoms. In addition, largely as a result of pressure brought to bear on the political leaders by some 42 United States non-government organisations, Article 68 was included. It required the Economic and Social Council to set up commissions in the human rights and economic and social fields. The outcome was the establishment of a Commission on Human Rights. Thus the Commission is one of the very few bodies to draw its authority directly from the Charter of the United Nations.

In April 1946, Mrs Eleanor Roosevelt, widow of President Franklin D. Roosevelt of the United States was appointed to chair an interim group of 9 members. By June the interim body had suggested that the new Commission should make its first task the development as soon as possible of an international bill of human rights.

Later in the year, the new Commission of Human Rights of 18 members, again chaired by Mrs Eleanor Roosevelt, was appointed, and included China's P.C.Chang, French Rene Cassin and Dr Charles Malik of Lebanon. The Commission met for the first time in January 1947 and considered several critical issues. Its decisions have greatly influenced the human rights development since then, including action at national level. It concluded that it should work to develop first a declaration rather than a treaty. (An international declaration is a statement of importance, and has high moral and often political significance, and is more than a recommendation, but it is less than a treaty, which is binding in international law.) Perhaps most important of all, it decided that the declaration should contain both civil and political and also economic and

social rights.

The Commission's view was that the declaration should be a relatively short, inspirational and energising document usable by common people. It should be the foundation and central document for the remainder of an international bill of human rights. It thus avoided the more difficult problems that had to be addressed when the binding treaty came up for consideration - just what role the state should have in enforcing the rights in its territory, and whether the mode of enforcing civil and political rights should be different from that for economic and social rights.

It was fortunate that the Commission made the decision to separate the formally legally binding covenant from the initial declaration. Although the declaration was endorsed in December 1948, the two covenants (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) that emerged to define the obligations of each state were not ready for ratification (formal approval by the governments of the world) until 1966, around 18 years later.

The Commission then turned to formulating the declaration. It decided to name it the Universal Declaration of Human Rights (UDHR). The very name emphasises the UDHR was to set a standard of rights for all people everywhere - whether male or female, black or white, communist or capitalist, victor or vanquished, rich or poor, for members of a majority or a minority in the community. In the words of the first preamble to the UDHR, it was to reflect:

"recognition of the inherent dignity and .. equal and inalienable rights of all members of the human family
"... and through that recognition provide "the foundation of freedom, justice and peace in the world".

Article 1 reflects the inspirational nature of the project. It was included only after much controversy about whether it was just stating the obvious, or whether it should be included in the preamble rather than the main text. It proclaims in ringing terms that:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

The reason for including it in the main text is to state firmly the basis of all human rights, the rationality of human persons and their obligation to deal fairly with everyone else, regardless of race, sex, wealth and so on. Article 7 follows up this theme by saying that all are to be equal before the law and have a right to protection against any form of discrimination.

Articles 3 and 27 are probably the core of the substantive provisions in the Declaration. They give every human being the rights to life, to liberty, to security of person (Art 3) and to an adequate standard of living (Art 27). The first three are core civil and political rights, the last an economic and social right. The right to an adequate standard of living is interesting in that it specifies as part of it the right to health and well-being not only of a person but of his or her family, and also the right to necessary food, clothing, housing and medical care, and the right to social security (also covered in Art 22).

Overarching all the particular rights are Articles 28 and 29. (There are 30 Articles in the Declaration, of which 17 could be regarded as relating to civil and political rights and 8 to economic and social rights). Articles 28 and 29 have not received much discussion, and have not been given legally binding force in the two Covenants. But they are explosive in their significance. Article 28 emphasises the responsibility of the whole international community for seeking and putting into place arrangements of both a civil and political and an economic and social kind that allow for the full realisation of human rights. It would be easy to ask questions about current arrangements or plans that hardly seem to do this, such as those relating to trade and investment arrangements and perhaps some of those planning to eradicate international crimes such as genocide and war crimes.

Article 30 is also of high importance, because it underlines the responsibility all people have to their community. Notice that the Article does not talk about the state. There is danger in claiming, as so many dictators and even democratic leaders have claimed, that people owe duties of an inalienable kind to the state. They do not. But they do have obligations to their fellow human beings, as Article 1 also emphasises.

Perhaps, looking back at the UDHR after half a century, the only significant lack is in the area of the environment. It can however be implied from rights such as the right to life and to an adequate standard of living.

Tribute should be played to three different groups. Firstly, to Eleanor Roosevelt and her advisers, mainly from the US Department of State. Somehow, she was able to maintain a generally harmonious atmosphere during virtually the whole of the long meeting phase. Second, to the many prominent people who provided drafts to the Committee for its consideration. These included noted international lawyer, Professor Hersch Lauterpacht of Cambridge University, and British author H G Wells. There was also a

draft based on work done in preparation for an American Declaration of the Rights and Duties of Man. Finally, there was the enormous work done by the secretariat, led by Professor J P Humphrey, that brought all this material together for the Commission to consider.

When the Commission finally took its vote on 18 June 1948, twelve of its fifteen members voted in favour. The Soviet Union, Byelorussia, the Ukraine and Yugoslavia (the Soviet bloc technically had only two members) abstained.

The draft then went to the Economic and Social Council, which did not change the text but arranged for it to go to the Third Committee of the UN General Assembly, where it struck difficulties. It was fortunate that the Committee's chairman at the time was Charles Malik. After no less than 81 long meetings, at which at least 168 amending resolutions were considered, the Committee, on 6 December 1948, at last reached agreement - just in time to be taken by the General Assembly before it concluded its meeting for the year.

On the evening of 10 December 1948, the General Assembly endorsed the text of the UDHR without amendment, only two days before it rose until the next year. There were no dissenting votes, but the six communist countries then members of the UN, and also Saudi Arabia and South Africa, abstained. The Assembly, in a rare gesture of appreciation, gave Mrs Roosevelt a standing ovation.

Just ahead of the advent of the Cold War and the consequent slowing down of many constructive developments, the Universal Declaration managed to emerge successfully from the complex and politically hazardous processes of the United Nations to become its human rights flagship. The Declaration had not managed at that time to achieve full recognition from the communist and certain middle eastern countries, but at least they had not voted against it.

Notwithstanding the initial difficulties and resistance, the Declaration has probably achieved a stature in the world that even the most optimistic of its founders in 1948 would not have expected. First, it has become accepted (often rather reluctantly, it is true) as an influential statement of standards, even by countries that are doubtful about the wholehuman rights enterprise. When countries such as Burma, Argentina, China and the former Yugoslavia feel bound to defend themselves when they are accused of being in breach of the UDHR, then it can be said to have achieved an important political and moral status.

Equally important, the UDHR has become almost an extension of the UN Charter. Although, the Charter has only a few articles that refer to human rights and fundamental freedoms, it is now usual to refer to the UDHR as setting out the content of those rights and freedoms. So it has become a part of the fabric of the UN itself, and is often referred to in resolutions of the UN General Assembly, and in its debates, for example in relation to the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960. At the human rights conference in Teheran in 1978, to mark the 30th anniversary of the UDHR, the representatives of 84 nations unanimously declared that the UDHR states a common understanding of the inalienable rights of all people and constitutes an obligation for the members of the international community.

Third, most if not all the provisions of the UDHR have almost certainly become a part of international customary law. The view is steadily growing among international lawyers that practice (always an important source of international law) includes not only acts such as observing rules about navigation at sea but also acts such as voting for resolutions at United Nations and other international gatherings. The very large and increasing number of ratifications of the two human rights Covenants, and the fact that the rights stated in the UDHR are commonly recognised as well founded in moral and good practice terms, means that there are now virtually unchallengeable grounds for asserting that the UDHR rights have become part of international customary law. That means that, unlike treaties, which only bind a country once it has accepted the treaty obligations, all countries in the world are bound, whatever their particular view may be. A country cannot repudiate international customary law, as it can a treaty obligation.

Fourth, Today, direct reference to the UDHR is made in the constitutions of many nations that realized their independence after the document was adopted. Prime ministers, presidents, legislators, judges, lawyers, legal scholars, human rights activists and ordinary people throughout the world have accepted the Universal Declaration as an essential legal code. Dozens of legally binding international treaties are based on the principles set forth in the UDHR, and the document has been cited as justification for numerous United Nations actions, including acts of the Security Council.

For these four reasons, those who boldly moved to form and then approve the provisions of the UDHR have left an abiding legacy for humankind that will rank with the great religious contributions of past centuries. The UDHR is an increasingly powerful instrument for the achievement of human dignity and peace for all.

Problems in converting the UDHR into an international law [check section title]

A founding principle of the United Nations is "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person [and] in the equal rights of men and women..." The Universal Declaration recognizes respect for human rights as the "foundation of freedom, justice and peace in the world."

Accordingly, along with the UN Charter, the Universal Declaration has provided the moral and legal basis for United Nations action, including action by the Security Council, against violators of human rights.

While the UDHR is an inspiring document that aims to promote equality and assurance of basic Human Rights, the struggle to fully implement human rights is still ongoing. Human Rights violations are still rampant in many parts of the world such as DPRK, China, India, parts of Africa, etc despite the existing laws, treaties and international Covenants that promote human rights. This has caused people to advocate that the UDHR becomes a binding International Law.

However this isn't an easy task and faces a few issues:

1) Islamic Countries such as Saudi Arabia and Iran aren't in favor of the UDHR as aspects of the UDHR violate Islamic Shari'ah (Law). For instance Article 16 which promotes equal marriage rights

2) The UDHR has become the cornerstone for around 20 major Human Rights treaties and covenants..Building on the achievements of the UDHR, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights entered into force in 1976. The two Covenants have developed most of the rights already enshrined in the UDHR, making them effectively binding on States that have ratified them. They set forth everyday rights such as the right to life, equality before the law, freedom of expression, the rights to work, social security and education. Together with the UDHR, the Covenants comprise the International Bill of Human Rights . Ergo, the need to have the UDHR as an International Law despite this is questionable.

3) Considering that today the UDHR has become a customary international law, the need to elevate it to a binding international law is debatable

Major parties involved and their views

The Allied Powers - After the second world war, the Allied powers resorted to punishing Nazi Germany for its crimes against humanity and setting up a new body that would supplement the League of Nations' role is upholding human rights which would eventually be the United Nations.

Islamic Countries - Human rights abuses run rampant in many parts of the Middle East. Saudi Arabia is often considered one of the strictest religious states and largest human rights abusers in the world. Despite this reputation, Saudi Arabia announced it would be sponsoring a discussion at the UN on religious tolerance starting November 12, 2008. Islam is the official religion in Saudi Arabia, with law requiring all citizens to be Muslim, and strictly prohibiting any non-Muslim worship, dress or goods which contradict Islam. Non-Muslims risk arrest, imprisonment, lashing, deportation and sometimes torture or even death for these crimes. Customs officials routinely open mail and shipments to search for contraband, which includes Bibles or non-Muslim religious materials. Women face incredible discrimination in law, with what has been called a "gender apartheid" system. By law, two women's testimony is equal to one man's in court. They are not allowed to drive a car, a bicycle or a motorbike, or be in a car with a non-related male. They are not allowed to vote, have separate buses, entrances, booths or areas in restaurants. They face more difficult and stringent divorce procedures, separate workplaces, and a law which permits polygyny for men. Women are to wear an abaya or headscarf or face possible arrest. Virtual slavery exists in Saudi Arabia, often South Asian "maids" lured with promises of high pay. These abuses are all in contradiction to the Universal Declaration of Human Rights, and are continually ignored by international governments who make no real move to sanction the government for its abuses.

Amnesty International - Amnesty International believes that the UDHR is a revolutionary document exactly because it is universal and thereby takes precedence over every political ideology and every parochial claim.

UN involvement, Relevant Resolutions and Treaties and Events:

- Universal Declaration of Human Rights - The UDHR was adopted because of the direct experiences from the second world war and represents the first global expression of rights to which all human beings are inherently entitled.
- UN Charter - The UN charter is the foundational treaty of the United Nations that acts as the constitutional treaty which binds to all members.

Possible Solution: - Pass a resolution to elevate UDHR to the status of binding international law while taking into consideration the needs of Islamic Countries and other countries.

Further Reading

- International Humanitarian Law and the International Human Rights Laws -
<http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-1/from-concept.htm>
- Customary International Law in the International Judicial Monitor -
http://www.judicialmonitor.org/archive_1206/generalprinciples.html
- International Committee of the Red Cross (ICRC) comprehensive compilation of customary international humanitarian law which is internationally binding in situations of armed conflict independently from the Geneva Conventions -
<http://www.icrc.org/eng/war-and-law/treaties-customary-law/customary-law/index.jsp>
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- Universal Declaration of Human Rights - <http://www.un.org/en/documents/udhr/index.shtml>

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